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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/684,700	10/14/2003	William Hubbs	29488/39575	3412
4743	7590	01/05/2005		EXAMINER
MARSHALL, GERSTEIN & BORUN LLP 6300 SEARS TOWER 233 S. WACKER DRIVE CHICAGO, IL 60606			GEHMAN, BRYON P	
			ART UNIT	PAPER NUMBER
			3728	

DATE MAILED: 01/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

8K

Office Action Summary	Application No.	Applicant(s)	
	10/684,700	HUBBS ET AL.	
	Examiner	Art Unit	
	Bryon P. Gehman	3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 24 November 2004.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-6,8-17 and 19-23 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 8-17 and 19-23 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 12 and 19 are finally rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 12, dependent from claim 8, is redundant in view of claim 8 as amended. It merely repeats language already set forth in amended claim 8.

Claim 19 depends from canceled claim 18.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 8-14, 16-20 and 22 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Fowler et al. (5,464,149) in view of King (3,258,114). Claims 8-15 and 17-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over O'Neill (5,505,371) in view of King. Fowler et al. and O'Neill each disclose a product display and support carton comprising a display box (170; 5; respectively) defined by a bottom panel (130-134; as shown) and an upwardly extending wall panel (102-108; as shown) forming a product carrying enclosure, the upwardly extending wall panel being defined by a front wall (102; 9), a rear wall (104; opposite 9) and a pair of generally parallel side

walls (106 and 108; perpendicular to 9), the display box having an open top, and a carton insert (52 and 54, and 56 and 58; 21 and 22) integrally associated with each of the side walls to form and support one of a pair of opposed dividers (each half of 50; 11 and 12) extending inwardly into the product carrying enclosure to define at least two separate product receiving compartments, the dividers being parallel to the front and rear walls. King discloses a display and support carton inclined at an angle to the vertical when its bottom panel is on a horizontal surface see Figure 6). To modify either one of Fowler et al. and O'Neill employing the inclining teaching of King would have been obvious in order to dispose the contents at an inclined angle to facilitate viewing the contents.

As to claims 9 and 17, Fowler et al. and O'Neill each disclose the front wall as a product restraining rail less in height than the intended contents.

As to claims 10 and 17, Fowler et al. and O'Neill each disclose the rear wall as a product support panel at least the height of products to be displayed.

As to claim 11, King further discloses walls as defined.

As to claims 14 and 20, Fowler et al. and O'Neill each show the carton inserts are generally U-shaped (from divider to front and rear walls in Fowler et al., between adjacent compartments in O'Neill).

As to claims 15 and 21, O'Neill shows an L-shape defined by a leg against the side wall and another leg perpendicular to the side wall.

5. Claims 16 and 22 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claims 13 and 19 above, and further in view of Edgerton Jr. et al. (5,372,299). Edgerton et al. disclose employing tape (column 3, line 63 through column 4, line 7) to secure the dividers. To modify the prior art combination further employing tape as a securing means for the dividers would have been obvious in view of Edgerton Jr. et al. to better secure dividers within a display box. For the tape to be double sided would have been obvious in order to secure opposing surfaces to one another, as double-sided tape is conventionally employed.

6. Claim 23 is finally rejected under 35 U.S.C. 103(a) as being unpatentable over O'Neill and the other art as applied to claim 17 above, and further in view of Ockey (3,955,671). O'Neill discloses corrugated material (column 2, lines 41-48) to comprise a display carton. Ockey discloses printed indicia (Figures 2, 3 and 8) contained on the carton. To modify the teaching of O'Neill employing printed indicia would have been obvious in order to provide information about the contents.

7. Applicant's arguments filed November 24, 2004 have been fully considered but they are not persuasive. With respect to the combination of King with either Fowler et al. or O'Neill, King discloses inclining the entire structure of a box. That partitions of a partitioned box would be similarly inclined would be obvious in the combination of either Fowler et al. or O'Neill with King. One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references.

See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Claims 1-6 are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bryon P. Gehman whose telephone number is (571) 272-4555. The examiner can normally be reached on Monday through Wednesday from 5:30am to 6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu, can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-4555.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Bryon P. Gehman
Primary Examiner
Art Unit 3728

BPG